

THE OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF EMERGENCY RULEMAKING

The Chief Procurement Officer of the District of Columbia, pursuant to authority granted by sections 202 and 204 of the District of Columbia Procurement Practices Act of 1985, as amended, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code §§2-302.02 and 2-302.04)(PPA), and Mayor's Order 2002-207, dated December 18, 2002, hereby gives notice of the adoption of the following emergency rules, amending Chapter 22 of Title 27 of the *District of Columbia Municipal Regulations (Contracts and Procurements)*. The rules will amend Chapter 22 of Title 27 *D.C. Municipal Regulations* to reflect changes necessary to implement the *Debarment Procedures Congressional Review Emergency Amendment Act of 2005*, D.C. Act 16-0004, effective January 19, 2005 (Act).

A Notice of Emergency Rulemaking to amend chapter 22 was published in the *D.C. Register* on January 2, 2004 (51 DCR 102), and the emergency rules expired on April 14, 2004. A second Notice of Emergency Rulemaking to amend chapter 22 by adding a new section 2218.10 was published in the *D.C. Register* on January 30, 2004 (51 DCR 1281). A third Notice of Emergency Rulemaking to amend chapter 22 was published in the *D.C. Register* on May 7, 2004 (51 DCR 4793), and the emergency rules expired on August 12, 2004.

Emergency rulemaking action is necessary to allow the Debarment and Suspension Panel (Panel) created by the Act to conduct hearings on certain companies and its principals due to convictions and other improprieties in connection with the award of District contracts. It is also important that the provisions of the emergency legislation continue in effect, without interruption, until the *Debarment Procedures Temporary Amendment Act of 2004*, signed by the Mayor on November 30, 2004 (51 DCR 9672) is law. Without these emergency rules, the Panel will not be able to conduct debarment proceedings on companies and its principals that have been convicted and have violated District contracting laws. The debarment or suspension raise serious questions about the appropriateness of the District contracting with certain companies because of convictions

or other improprieties in connection with the award or performance of District contracts, and the length of time for which a contractor should be debarred from District contracting. Adoption of emergency rules to establish these procedures to allow the Panel to convene is necessary for the immediate preservation of the public peace, health, safety, or welfare, in accordance with D.C. Official Code §2-505(c).

To ensure that amended chapter 22 will continue in effect, action was taken on March 16, 2005, to adopt the following rules on an emergency basis effective on that date. These rules will remain in effect for up to one hundred twenty (120) days from the date of adoption, unless superseded by another rulemaking notice or by publication of a Notice of Final Rulemaking in the *D.C. Register*.

CHAPTER 22

CONTRACTORS

Chapter 22 is amended by adding a new section 2218 to read as follows:

2218 Debarment and Suspension Panel

- 2218.1 This section shall apply to any debarment or suspension that is required to be heard by the Debarment and Suspension Panel (Panel) in accordance with the *Debarment Procedures Congressional Review Emergency Amendment Act of 2005*, D.C. Act 16-0004, effective January 19, 2005 (Act).
- 2218.2 For any debarment or suspension that the Panel hears, the Chief Procurement Officer (CPO) shall transmit to the Panel his debarment or suspension recommendation and any supporting documentation.
- 2218.3 Upon receipt of the documentation specified in section 2218.2 from the CPO, the Chair of the Panel shall convene the Panel to conduct a hearing of the debarment or suspension in accordance with Title 27 *D.C. Municipal Regulations*, sections 2213 through 2217, except as provided in section 2218.4. The term “Director,” as it appears in sections 2213 through 2217, shall mean the “Panel.”
- 2218.4 For any debarment or suspension that the Panel hears, the period of time provided in section 2214.1(c) shall be shortened to fifteen (15) days after receipt of the notice.
- 2218.5 The Panel shall hear and decide, *de novo*, all debarments and suspensions required to be heard in accordance with this section and the Act.
- 2218.6 The attendance of at least five (5) members of the Panel shall constitute a quorum to hear a debarment or suspension.

2218.7 A majority vote of those present and voting shall be necessary and sufficient for any action taken by the Panel. Each Panel member in favor of the debarment or suspension decision of the Panel shall indicate his or her agreement with the decision by signing the decision.

2218.8 *Ex parte* communications, as defined in section 2299.1, shall be prohibited. Excluded from *ex parte* communications are those that:

(a) are specifically authorized by law to be made on an *ex parte* basis;

(b) relate to the Panel's administrative functions or procedures; or

(c) are matters of public record.

A Panel member or staff member for the Panel who receives an *ex parte* communication prohibited by this section, shall immediately report its receipt to the Panel Chair and prepare a memorandum describing in detail the substance of the communication. The memorandum shall be placed in the debarment or suspension file, along with the actual communication if it is in written form. The Panel shall provide a copy of the memorandum to all parties.

2218.9 Panel members shall promptly advise the Chair of the Panel of any conflict of interest, or appearance thereof, relating to any debarment or suspension action under consideration by the Panel. Each member of the Panel shall disqualify himself or herself from acting on matters in which he or she has a conflict of interest, or the appearance thereof, in accordance with Chapter 18 of the District of Columbia Personnel Regulations.

2218.10 The Panel shall keep and maintain a case docket of current debarments or suspensions under the Panel's jurisdiction; copies of decisions and final orders of the Panel; and copies of the Panel's rules. The case docket, updated monthly, shall provide the names of the companies or individuals proposed for debarment or suspension, the case number, the date the Panel received the debarment or suspension, and the date of any scheduled hearing on the merits of the debarment or suspension. The case docket, copies of decisions, final orders, and rules shall be available for inspection by the public at the office of the Panel Chair.

Section 2299.1 is amended by adding the following definitions:

Debarment and Suspension Panel – the panel established by the *Debarment Procedures Congressional Review Emergency Amendment Act of 2005*, D.C. Act 16-0004, effective January 19, 2005 (Act), consisting of the Chief Procurement Officer and a representative from the Office of the Chief Financial Officer, the Office of the Deputy

Mayor for Planning and Economic Development, the Deputy Mayor for Operations, the Director of the Office of Labor Relations and Collective Bargaining, and from each agency which, in the judgment of the Mayor, would be directly and significantly affected by the proposed debarment.

Ex parte communications – any oral or written communication with the Panel, which excludes one or more parties to the case, concerning the merits of the case pending before the Panel, made by any persons directly or indirectly involved in the outcome of the case.